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15 *Attorneys for Defendants Phoenix Wellness Massage, Inc.
and Phoenix Wellness Avondale, Inc.*

16 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

17 **IN AND FOR THE COUNTY OF MARICOPA**

18 [REDACTED] a single woman,
19 Plaintiff,

20 Case No.: [REDACTED]

21 v.
22 MASSAGE ENVY FRANCHISING, LLC.,
23 an Arizona corporation; PHOENIX
24 WELLNESS MASSAGE, INC., an Arizona
25 corporation, d/b/a MASSAGE ENVY SPA;
26 PHOENIX WELLNESS AVONDALE,
27 INC., an Arizona corporation, d/b/a
28 MASSAGE ENVY SPA; [REDACTED]
and JANE DOE [REDACTED] husband and wife;
JOHN DOE I-X; JANE DOE I-X; and Black
& White Corporations I-X; ABC
Partnerships I-X.

29 **DEFENDANTS PHOENIX
WELLNESS MASSAGE, INC. AND
PHOENIX WELLNESS AVONDALE,
INC.'S ANSWER**

30 *(Assigned to the Honorable Margaret
Mahoney)*

31 Defendants.

32 Defendants PHOENIX WELLNESS MASSAGE, INC. and PHOENIX WELLNESS
33 AVONDALE, INC., ("Phoenix Wellness Defendants") by and through undersigned counsel, for
34 their answer to Plaintiff's Complaint hereby admit, deny and allege as follows:

JURISDICTIONAL ALLEGATIONS

1. Phoenix Wellness Defendants admit the allegations in Paragraph 1 of Plaintiff's Complaint based on information and belief.

2. Answering Paragraph 2 of Plaintiff's Complaint, Phoenix Wellness Defendants admit that Massage Envy Franchising, LLC ("MEF") is authorized and doing business in Arizona. Phoenix Wellness Defendants deny the remaining allegations in Paragraph 2 of Plaintiff's Complaint.

3. Answering Paragraph 3 of Plaintiff's Complaint, Phoenix Wellness Defendants admit that Phoenix Wellness Massage, Inc. is an Arizona corporation authorized and doing business in Arizona at the address listed in Paragraph 3. Phoenix Wellness Defendants deny the remaining allegations in Paragraph 3 of Plaintiff's Complaint.

4. Answering Paragraph 4 of Plaintiff's Complaint, Phoenix Wellness Defendants admit that Phoenix Wellness Avondale, Inc. is an Arizona corporation authorized and doing business in Arizona at the address listed in Paragraph 4. Phoenix Wellness Defendants deny the remaining allegations in Paragraph 4 of Plaintiff's Complaint.

5. Answering Paragraph 5 of Plaintiff's Complaint, Phoenix Wellness Defendants lack sufficient information to admit or deny the allegations in Paragraph 5 and, thus, deny those allegations.

6. Answering Paragraph 6 of Plaintiff's Complaint, Phoenix Wellness Defendants admit [REDACTED] was an employee of Phoenix Wellness Massage, Inc. during the relevant periods of time alleged in Plaintiff's Complaint. Phoenix Wellness Defendants deny the remaining allegations in Paragraph 6 of Plaintiff's Complaint.

7. Answering Paragraph 7 of Plaintiff's Complaint, Phoenix Wellness Defendants lack sufficient information to admit or deny the allegations in Paragraph 7 and, thus, deny those allegations.

8. Phoenix Wellness Defendants deny the allegations in Paragraph 8 of Plaintiff's Complaint.

GENERAL ALLEGATIONS

9. Answering Paragraph 9 of Plaintiff's Complaint, Phoenix Wellness Defendants reassert their responses to Paragraphs 1-8 as if set forth fully herein.

10. Answering Paragraph 10 of Plaintiff's Complaint, Phoenix Wellness Defendants admit that Phoenix Wellness Defendants operated the Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona and that Plaintiff was a customer of that Massage Envy location on December 1, 2015. Phoenix Wellness Defendants deny the remaining allegations in Paragraph 10 of Plaintiff's Complaint.

11. Answering Paragraph 11 of Plaintiff's Complaint, Phoenix Wellness Defendants admit that [REDACTED] was an employee of Phoenix Wellness Massage, Inc. at the Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona on December 1, 2015. Phoenix Wellness Defendants deny the remaining allegations in Paragraph 11 of Plaintiff's Complaint.

12. Answering Paragraph 12 of Plaintiff's Complaint, Phoenix Wellness Defendants admit that [REDACTED] provided massage therapy to Plaintiff at the Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona on December 1, 2015. Phoenix Wellness Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 12 and, thus, deny those allegations.

13. Answering Paragraph 12 of Plaintiff's Complaint, Phoenix Wellness Defendants admit that Plaintiff reported to Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona that [REDACTED] had engaged in alleged misconduct during her massage on December 1, 2015.

COUNT I

Negligent hiring/ retention/ control / supervision / training
(Defendants Message Envy / Phoenix Wellness Massage / Phoenix Wellness Avondale)

14. Answering Paragraph 14 of Plaintiff's Complaint, Phoenix Wellness Defendants reassert their responses to Paragraphs 1-13 as if set forth fully herein.

15. Answering Paragraph 15 of Plaintiff's Complaint, Phoenix Wellness Defendants operated Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona in

1 compliance with the standard of care and supervised, hired, and trained employees in compliance
2 with the standard of care, including but not limited to all aspects of prohibited contact or touching
3 of customers. Phoenix Wellness Defendants deny the remaining allegations in Paragraph 15.

4 16. Phoenix Wellness Defendants deny the allegations in Paragraph 16 of Plaintiff's
5 Complaint.

6 17. Phoenix Wellness Defendants deny the allegations in Paragraph 16 of Plaintiff's
7 Complaint.

8 COUNT II

9 Negligent protection / safety on the premises 10 (Defendants Message Envy / Phoenix Wellness Massage / Phoenix Wellness Avondale)

11 18. Answering Paragraph 18 of Plaintiff's Complaint, Phoenix Wellness Defendants
reassert their responses to Paragraphs 1-17 as if set forth fully herein.

12 19. Answering Paragraph 19 of Plaintiff's Complaint, Phoenix Wellness Defendants
13 operated Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona in
14 compliance with the standard of care, including but not limited to any duties of care to maintain
15 safe premises for business invitees. Phoenix Wellness Defendants deny the remaining allegations
16 in Paragraph 19.

17 20. Answering Paragraph 20 of Plaintiff's Complaint, Phoenix Wellness Defendants
18 operated Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona in
19 compliance with the standard of care, including but not limited to any duties of care to maintain
20 safe premises for business invitees. Phoenix Wellness Defendants deny the remaining allegations
21 in Paragraph 20.

22 21. Answering Paragraph 21 of Plaintiff's Complaint, Phoenix Wellness Defendants
23 operated Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona in
24 compliance with the standard of care, including but not limited to any duties of care to maintain
25 safe premises for business invitees. Phoenix Wellness Defendants deny the remaining allegations
26 in Paragraph 21.

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1 22. Phoenix Wellness Defendants deny the allegations in Paragraph 22 of Plaintiff's
2 Complaint.

3 23. Phoenix Wellness Defendants deny the allegations in Paragraph 23 of Plaintiff's
4 Complaint.

COUNT III
(Negligence / Respondeat Superior)
(All Defendants)

7 24. Answering Paragraph 24 of Plaintiff's Complaint, Phoenix Wellness Defendants
8 reassert their responses to Paragraphs 1-23 as if set forth fully herein.

9 25. Answering Paragraph 25 of Plaintiff's Complaint, Phoenix Wellness Defendants
10 lack sufficient information to admit or deny the allegations in Paragraph 25 and, thus, deny those
11 allegations.

12 26. Phoenix Wellness Defendants deny the allegations in Paragraph 26 of Plaintiff's
13 Complaint.

14 27. Phoenix Wellness Defendants deny the allegations in Paragraph 27 of Plaintiff's
15 Complaint.

16 28. Phoenix Wellness Defendants deny the allegations in Paragraph 28 of Plaintiff's
17 Complaint.

COUNT IV
(Lack of Informed Consent)
(All Defendants)

20 29. Answering Paragraph 29 of Plaintiff's Complaint, Phoenix Wellness Defendants
21 reassert their responses to Paragraphs 1-28 as if set forth fully herein.
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23 30. Answering Paragraph 30 of Plaintiff's Complaint, Phoenix Wellness Defendants
24 operated Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona in
25 compliance with the standard of care, including but not limited to any duties regarding the
26 performance of massage treatment procedures. Phoenix Wellness Defendants deny the remaining
27 allegations in Paragraph 30.

1 31. Phoenix Wellness Defendants deny the allegations in Paragraph 31 of Plaintiff's
2 Complaint.

3 32. Phoenix Wellness Defendants deny the allegations in Paragraph 32 of Plaintiff's
4 Complaint.

**ADDITIONAL RESPONSES, ALLEGATIONS
AND AFFIRMATIVE DEFENSES**

7 1. Phoenix Wellness Defendants deny each any every allegation of Plaintiff's
8 Complaint and its prayer for relief, not specifically admitted herein.

9 2. Plaintiff's Complaint against Phoenix Wellness Defendants fails to state a claim
10 upon which relief can be granted.

11 3. To the extent Plaintiff suffered any damages, those damages were caused, in whole
12 or part, by the actions or inactions of Plaintiff and/or by others over which Phoenix Wellness
13 Defendants had no control such that Phoenix Wellness Defendants did not proximately cause
14 those damages.

15 4. To the extent any sexual contact occurred between Plaintiff and [REDACTED] such sexual
16 conduct was consensual.

17 5. Phoenix Wellness Defendants complied with the applicable standard of care in
18 operation of Massage Envy Spa located at 9945 W. McDowell Rd., Suite 107, Avondale, Arizona,
19 including but not limited to hiring, training and supervising its employees.

20 6. To the extent Plaintiff suffered any damages, those damages were caused, in whole
21 or in part, by others, including those who were acting outside the course and scope of any authority
22 for Phoenix Wellness Defendants such that Phoenix Wellness Defendants are not vicariously
23 liable for such others' conduct.

24 7. To the extent Plaintiff suffered any damages, Plaintiff is barred from recovery of
25 those damages because of the speculative or unreasonable nature of the damages.

8. Plaintiff's claim for punitive damages violates the due process of law clause and the equal protection of the laws clause of the Fourteenth Amendment to the United States

1 Constitution, violates the due process of law clause of Article II, Section 4 of the Arizona
2 Constitution, violates the prohibition against excessive fines contained in Article II, Section 15 of
3 the Arizona Constitution, and violates the prohibition of ex post facto laws and laws impairing the
4 obligation of contracts contained within Section 10, ¶ 1 of Article I of the United States
5 Constitution.

6 9. Plaintiff's claim for punitive damages is deficient insofar as Phoenix Wellness
7 Defendants' conduct, even as alleged, does not meet the standard for an award of punitive
8 damages under Arizona law.

9 10. Phoenix Wellness Defendants presently have insufficient knowledge or information
10 on which to form a belief as to whether they may have additional, as yet unasserted, affirmative
11 defenses available. Phoenix Wellness Defendants reserve the right to assert additional affirmative
12 defenses, including but not limited to those set forth in Rule 8(c), Arizona Rules of Civil
13 Procedure, in the event discovery indicates that they would be appropriate.

WHEREFORE, having fully answered Plaintiff's Complaint, Phoenix Wellness Defendants hereby request the following relief:

1. An Order dismissing Plaintiff's Complaint with prejudice and awarding nothing to Plaintiff;
 2. An Order awarding Phoenix Wellness Defendants all costs incurred; and
 4. An Order awarding any such other relief as the Court deems proper in this matter.

RESPECTFULLY SUBMITTED this 9th day of April, 2018.

SANDERS & PARKS, P.C.

By /s/Shanks Leonhardt
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Phoenix, AZ 85012-3099
*Attorneys for Defendants Phoenix Wellness
Massage, Inc. and Phoenix Wellness Avondale, Inc.*

1 **ORIGINAL** of the foregoing delivered via E-Filing System
2 on this 9th day of April, 2018 with:

3 Clerk of the Court
4 **MARICOPA COUNTY SUPERIOR COURT**
5 Central Court Building
6 201 W. Jefferson
7 Phoenix, AZ 85003-2243

8 **COPIES** of the foregoing delivered via E-Filing System
9 on this 9th day of April, 2018 to:

10 Honorable Margaret Mahoney
11 **MARICOPA COUNTY SUPERIOR COURT**
12 East Court Building
13 101 W. Jefferson, Courtroom 711
14 Phoenix, AZ 85003-2243

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27 By: /s/A. Burns

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